



Order Decision

Site visit made on 8 April 2018

by D. M. Young BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 03 May 2018

Order Ref: ROW/3182380

- This Order is made under Section 119 of the Highways Act 1980 (the Act) and is known as the Essex County Council Public Path Diversion Order 2017 Footpath 25 Great Bardfield in the District of Braintree.
- The Order is dated 12 May 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were four objections outstanding when Essex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed with a modification as set out in the Formal Decision below.

Procedural Matters

1. This case concerns the proposed diversion Public Footpath 25 (FP25) which traverses open land close to the River Pant to the east of Great Bardfield. The legal line of FP25 has been obstructed by a post and wire fence and the proposed route is already in situ. Nonetheless, as temporary circumstances should be disregarded, my determination must be made as if the legal line of FP25 were currently available. No-one requested an accompanied site visit, so my inspection was carried out unaccompanied.

The Main Issues

2. The Order is made in the interests of the owner of the land crossed by the Footpath. Section 119 of the Act requires that, before confirming the Order, I should be satisfied that:
 - (a) it is expedient, in the interests of the owner, that the footpath in question should be diverted;
 - (b) the new footpath will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to its effect;
 - i) on the public enjoyment of the path as a whole; and
 - ii) the effect the coming into operation of the order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
3. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of any rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.

Reasons

Whether it is expedient, in the interests of the owner of the land, that the footpath in question should be diverted

4. As I saw on my site visit, the landowner keeps livestock on the fields crossed by the legal line of FP25. It is stated that the reason for the proposed diversion is to increase safety and to prevent dogs from accessing the fields. Although no information of the alleged previous 'incidents' has been provided by the landowner, I am satisfied there is ample wider evidence to suggest that the presence of dogs in close proximity to sheep can undermine their health and safety¹. I am therefore satisfied that it is expedient, in the interests of the owner of the land, that the footpath in question should be diverted

Whether the new route will be substantially less convenient to the public

5. The diversion of FP25 would be fairly modest in its extent. According to the Council the definitive line of FP25 is 340 metres in length (points A-B-F) and the proposed route would be approximately 435 metres (points A-C-B-D-E-F). I do not consider this would be significant in terms of what is likely to be a much longer recreational walk using this and other paths in the area.
6. There would be no reduction in the width of the path, any material change to its surfacing or additional limitations. I do not therefore accept the suggestion that the diversion would make things more difficult for the elderly or the less mobile. With regards to limitations, I have noted The Ramblers Association representations about the existing limitation at Point A. No mention of this or the other limitation shown at Point B is made in the Order. I therefore intend to remove those references to FG and KG on the Order map. If there is a requirement for these limitations, the Council can resolve this at a later date through its powers under section 147 of the Act. Those limitations to the west of Point F are outside the scope of this Order.
7. I have noted various comments relating to flooding. Despite a significant amount of wet weather in the days leading up to my site visit, the proposed route was not flooded nor was the ground particularly heavy. Whilst the photographic evidence shows the land has flooded, I have no substantive evidence as to the frequency of such events. Accordingly, I concur with the Council that such events are at best infrequent and walkers are likely to be well aware of the possibility that the route might be obstructed.
8. Some have also suggested that the proposed route is at a lower level than the definitive alignment. However, this is disputed by the landowner. From my observations, I cannot say with any degree of certainty that the proposed route is at a lower level. Indeed the Environment Agency flood map shows that both routes are at the same risk of flooding. That being the case, I do not consider that the proposed route would be materially more susceptible to flooding than the existing route.
9. It has been claimed that the users of the proposed route would be at risk from falling trees. However, I saw plenty of evidence of recent tree management work when I undertook my site visit. Moreover, the landowner has supplied a letter from his Arboriculturalist confirming that the remaining trees are in good

¹ "Tackling livestock worrying and encouraging responsible dog ownership" 2017

health and that the area is actively managed. No cogent evidence is before me to suggest any of the trees along the proposed route are at risk. Accordingly, I consider that such concerns are overplayed.

10. Based on the foregoing, there would not be any significant disadvantage or loss to the general public as a result of the diversion. I therefore conclude that the new route would not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the route as a whole

11. I found the proposed route which offers close quarter views of the River Pant as well as longer distance views to the north to be a pleasant countryside walk. Whilst I cannot discount the possibility some might prefer to walk across the field, it cannot reasonably be said that the proposed route would diminish the public's enjoyment of the route as a whole.

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

12. The land crossed by the existing and proposed routes would remain within the same ownership. There is no evidence that there would be any negative effect on land served by the existing or proposed routes. Although compensation issues have not been raised, the landowner has agreed to defray any compensation which becomes payable in consequence of the Order being confirmed.

ROWIP

13. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the Council's ROWIP.

Other Matters

14. The Council has confirmed that there is an error in Part 2 of the Order which on the fifth line refers to 'south-easterly' instead of 'south-westerly'. No one has complained about this matter but I have considered whether any prejudice may have arisen. I consider, looking at the Order as a whole, which includes the Order map, that no prejudice has arisen in from this typographical error and, therefore, it is appropriate for me to modify the Order.

Whether it is expedient to confirm the order

15. There is nothing in the submissions or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order. I therefore conclude that with modifications it is expedient in the interests of the landowner to confirm the Order.

Conclusions

16. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modifications set out below.

Formal Decision

17. The Order is confirmed subject to the following modifications:

- On the fifth line of Part 2 of the Order '*Description of site of new paths*' the reference to 'south-easterly' shall be deleted and replaced with 'south-westerly'.
- The reference to KG & FG at Point A and FG at Point B on the Order Map shall be removed.

D. M. Young

Inspector

